IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.* Plaintiffs, vs. TYSON FOODS, INC., *et al.* Defendants.	Case No. 05-CV-0329-GKF-SAJ

GEORGE'S, INC.'S AND GEORGE'S FARMS, INC.'S RESPONSE TO PLAINTIFFS' MOTION TO DETERMINE THE SUFFICIENCY OF GEORGE'S, INC.'S AND GEORGE'S FARMS, INC.'S RESPONSES TO THE PLAINTIFFS' APRIL 20, 2007 REQUESTS TO ADMIT (DOCKET# 1265)

AND

GEORGE'S, INC., AND GEORGE'S FARMS, INC.'S ADOPTION OF PETERSON FARMS, INC.'S RESPONSE TO PLAINTIFFS' MOTION TO DETERMINE THE SUFFICIENCY OF DEFENDANT PETERSON FARMS, INC.'S RESPONSES TO PLAINTIFFS' APRIL 20, 2007 REQUESTS TO ADMIT (DOCKET# 1262)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

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COMES NOW Defendants George's, Inc. and George's Farms, Inc. (hereinafter collectively "George's") and for their Response to Plaintiffs' "Motion to Determine the Sufficiency of George's, Inc.'s and George's Farms, Inc.'s Responses to the Plaintiffs' April 20, 2007 Requests to Admit" hereby state and allege as follows, to-wit:

I. INTRODUCTION

Plaintiffs served Requests for Admission on George's on April 20, 2007. At or about the same time, Plaintiffs served substantially similar Requests for Admission on the other Defendants in this action. Plaintiffs correctly note that, subject to certain objections, George's responded to eight (8) Requests for Admission and informed the

Plaintiffs that after reasonable inquiry George's was unable to admit or deny the five (5) remaining Requests for Admission. (Plaintiffs' Motion, Docket # 1265, p. 1). George's stands on its Objections and Responses.

The Requests for Admission served upon George's contained nine (9) objectionable "Definitions," thirteen (13) Requests for Admission, and one (1) Request for Production of Documents. Each of the thirteen Requests for Admission require the responding party to refer to one or more of the nine (9) listed definitions to attempt to ascertain what the Request for Admission may be asking. Ten (10) of the thirteen (13) Requests for Admission request information pertaining to independent third parties. Many of the Plaintiffs' Requests for Admission relate directly to issues of law and the Plaintiffs' contentions in this case. For the reasons set forth herein, George's Objections and Responses to the Plaintiffs' Requests for Admission should be sustained by this Court.

II. LEGAL STANDARD

Courts faced with Motions to Determine the Sufficiency of Responses to Requests to Admit have "substantial discretion to determine the propriety of [the] requests and the sufficiency of the responses." *Audiotext Communications Network, Inc., et al. v. US Telecom, Inc., d/b/a Sprint Telemedia, f/k/a Sprint Gateways*, 1995 WL 625744, *1 (D. Kan., Oct. 5, 1995). Furthermore, "[w]hen passing on a motion to determine the sufficiency of answers or objections, the court obviously must consider the phraseology of the requests as carefully as that of the answers or objections." *Audiotext*, 1995 WL 625744, *2 (quoting *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D. Conn. 1988)) *See also Ash Grove Cement v. Employers Ins. Of Wausau*, Slip Copy 2007 WL 2333350, *3 (D.

Kan. August 16, 2007).

III. DISCUSSION

Plaintiffs' Requests for Admission are Objectionable.

A review of rules and case law regarding Rule 36 Requests for Admissions reveals fundamental flaws throughout the Plaintiffs' April 20, 2006 Requests for Admission. The most glaring flaws have to do with the self-serving "definitions" employed by the Plaintiffs. The Plaintiffs' "definitions" are far from straightforward and clear and cause the Plaintiffs' Requests for Admission to fail to comply with Rule 36.

Requests for Admission "should be in simple and concise terms in order that [they] can be denied or admitted with an absolute minimum of explanation or qualification." *McClelland & Associates, Inc. v. Medical Action Industries, Inc.*, 2006 WL 2522738, *2 (D. Kan. July 12, 2006) (*Quoting Doeble v. Sprint Corporation, et al.*, 2001 WL 1718259 (D. Kan. June 5, 2001); *See also Havenfield Corporation v. H&R Block, Inc.*, 67 F.R.D. 93, 96-97 (W.D. Mo. 1973). The party propounding Requests for Admission "should not state 'half a fact,' or 'half-truths' which require the answering party to qualify responses." *Id.*

Requests for Admission "should be limited to a single point and stated clearly, unambiguously, and without argument. Compound, complex, and vague statements are prone to denial or objection." *Audiotext*, 1995 WL 625744, *3. "A party is not required to respond to a request [for admission] containing vague or ambiguous statements." *Tulip Computers International B.V. v. Dell Computer Corporation*, 210 F.R.D. 100, 107-108 (U.S.D.C Del. Oct. 2, 2002)(*citing* 7 James Wm. Moore, et. al. *Moore's Federal Practice* § 36.10(6)(3d ed. 1997). "The requesting party bears the burden of setting forth its

requests simply, directly, not vaguely or ambiguously." *Henry v. Champlain Enterprises, Inc., et al.*, 212 F.R.D. 73, 77 (N.D.NY Jan. 10, 2003)(internal citations omitted). Furthermore, "[t]o facilitate clear and succinct responses, the facts stated within the request must be singularly, specifically, and carefully detailed." *Id.* "Requests for Admission should be drafted in such a way that a response can be rendered upon a mere examination of the Request." *Id.*

1. THE PLAINTIFFS' DEFINITIONS ARE VAGUE, OVERLY BROAD, AND UNDULY BURDENSOME AND, AS SUCH VIOLATE THE FEDERAL RULES OF CIVIL PROCEDURE.

A review of the Requests for Admission reveals that each of the thirteen (13) Requests fails to meet the threshold requirements that they be clear, unambiguous, and capable of response without qualification. To have any hope of possibly understanding the Plaintiffs' Requests for Admission one must refer back to one or more of the "definitions" used by the Plaintiffs. For example, Request for Admission Number 13 requires reference to one (1) definition; Request for Admission Numbers 1, 2, 10, 11, and 12 require reference to two (2) definitions; Request for Admission Numbers 3, 4, 5, 6, and 7 require reference to three (3) definitions; and Request for Admission Numbers 8 and 9 require reference back to four (4) definitions. The problems associated with referring back to the Plaintiffs' "definitions" is magnified by the fact that the "definition" of "waters of the State" is not actually used in any of the Requests for Admission but is instead used in the definition of "Run-off." As such, for the five (5) Requests for Admission that contain the term "run-off" one has to refer to yet another "definition" simply to attempt to understand what is being requested.

Moreover, the self-serving overly broad and vague "definitions" employed have

not been drafted based upon the facts developed during discovery in this case and, therefore, are not proper for use in Requests for Admission. The "definitions" employed by the Plaintiffs make it impossible for one to understand what is being requested based upon a mere examination of the Requests. For these and other reasons, George's objected to the "definitions" and stands on those objections.

Contrary to the purpose and spirit of Rule 36, the Plaintiffs employ nine (9) objectionable, argumentative, and contention based definitions in their Requests for Admission. In the instant Motion, Plaintiffs' attempt to justify this practice by explaining why their definitions and requests are "clear, straightforward, and understandable." (Plaintiffs' Motion, Docket # 1265, p. 2, 5). It is somewhat telling that the Plaintiffs devote eight (8) pages of their Motion to explaining why the chosen "definitions" are not objectionable. In support of their argument, Plaintiffs refer the Court to at least eight (8) additional sources or references not included in their Requests for Admission as further explanation why their Requests and definitions are not objectionable. By way of example, please not the following:

> On page 5 and in support of their definition of "poultry waste", the Plaintiffs refer to the Oklahoma Registered Poultry Feeding Operations Act, to a document produced during the deposition of an individual who has no relationship with George's, and to a report from North Carolina State University;
>
> On page 6 and in support of their definition of "poultry waste" the plaintiffs refer to the deposition of George's corporate representative, who was provided a definition of the term "poultry waste" by Plaintiffs' counsel during the deposition that was <u>different</u> from the definition employed in the requests for admission but nonetheless still objectionable;
>
> On page 7 and in support of their definition of "your poultry growing operations" the plaintiffs refer to three additional sources or references;

> On page 9 and in support of their definition of "pathogens" the Plaintiffs refer to a web-site and the definition that the Plaintiffs "derived" their "definition" of pathogens from[1];
>
> On page 10 and in support of their definition of "run-off" the Plaintiffs refer to the Oklahoma Registered Poultry Feeding Operations Act; and
>
> On pages 11 and 12 and in support of their incredibly broad definition of "waters of the state" the Plaintiffs again refer to the Oklahoma Registered Poultry Feeding Operations Act.

None of the additional references or resources referenced in the Plaintiffs' Motion were included in the Requests for Admission. It is illogical for the Plaintiffs' to claim that the Requests for Admission and "definitions" are straightforward but then need eight (8) pages of briefing and multiple additional outside resources to explain just how straightforward they are. As noted in *Audiotext*, requests for admission should be stated "singly," "phrased simply and directly," and "limited to a single point." *Audiotext*, 1995 WL 625744, *3. (internal citations omitted). Moreover, "[a]n objection will lie if a request is so defective in form that an answer to it cannot be required." *Id.* "[T]he requesting party bears the burden of setting forth its requests simply, directly, not vaguely or ambiguously, and in such a manner that they can be answered with a simple admit or deny without an explanation, and in certain instances, permit a qualification or explanation for purposes of clarification." *Henry v. Champlain Enterprises, Inc., et al.*, 212 F.R.D. 73, 77 (N.D.N.Y. Jan. 10, 2003).

Clearly, the Plaintiffs have failed to meet their burden and have failed to put forth Requests for Admission that comply with Rule 36. Plaintiffs have attempted to incorporate objectionable and argumentative "definitions" into their Requests for

[1] Ironically, the EPA definition that the Plaintiffs used to "derive" their definition is narrower than that employed by the Plaintiffs, but yet the Plaintiffs claim that their "derived" definition is not overly broad.

Admissions and in doing so have expanded the scope of their requests to such an extent that it is impossible to respond without qualification or by merely reviewing the request itself. For these reasons the Court should sustain George's Objections and Responses to the Plaintiffs' April 20, 2007 Requests for Admission.

As part of their arguments in support of their definitions of "poultry waste" and "run-off", Plaintiffs' claim that the definitions are not objectionable because they are taken "with slight modification" from the Oklahoma Registered Poultry Feeding Operations Act. (Plaintiffs' Motion, Docket 1265, p. 5, 10). Assuming arguendo that because a term or definition is used in the Act it is then proper to use it in a Request for Admission (which is disputed) and assuming further that the Plaintiffs incorporated and referenced the Act in their requests (which they did not) the Plaintiffs' "definitions" are still objectionable because they did not use the entire definition. As such, any request that employs the partial or modified definition is objectionable on that ground as well.

This is akin to the situation in *Ryan v. National Union Fire Ins. Co. of Pittsburgh*, 2007 WL 1238616 (D.Conn. April 25, 2007), where the Court found that where a requesting party chose to paraphrase a section of an insurance policy the responding party could deny the requests for admission based upon the requesting parties failure to include the complete text of the policy. *Id.* at *3. In this case, the Plaintiffs fashion the definition of their choosing, which is correctly objected to, and then try to justify their "definitions" by referring to the Act, but yet admit that they modified the definition set forth in the Act. Each Request for Admission that uses the term "run-off" or "poultry waste" is objectionable based upon the Plaintiffs' "slight modification" of the term they claim to have drawn from the Act. For these and the aforementioned reasons, the Court should

sustain George's Objections and Responses.

The Plaintiffs' use of the term "hazardous substances" is objectionable. As with each of the other definitions employed by the Plaintiffs, in support of the use of the term "hazardous substances" plaintiffs refer to CERCLA and to "numerous cases." Simply because a term has been used in an Act in a certain manner or in any number of cases in a certain manner does not mean that it is not objectionable when used broadly or vaguely in a Request for Admission. Moreover, the fact that the Plaintiffs refer to a number of other sources or things beyond their Requests for Admission in order to understand the term or terms used in those Requests is quite telling as to why the Requests are objectionable in the first place. The Plaintiffs' attempt to justify their poorly drafted requests by referring to additional sources is misplaced.

The party propounding the Requests for Admission bears the burden of drafting the requests in such a fashion that the responding party can respond based upon a mere examination of the Request. *Henry*, 212 F.R.D. 73, 77. In this case, a responding party cannot respond to a single Request for Admission propounded upon it without having to refer to the objectionable definitions or the myriad of other sources the Plaintiffs now refer to after the fact. Much like the Plaintiffs have refused to "guess" the meaning or scope of terms and things that it alleges are objectionable, George's will not guess or hypothesize about things it finds objectionable. (Plaintiffs' Response to Motion To Compel, Docket # 1234, p. 14). For these and the aforementioned reasons, George's stands on its General Objections and hereby requests that this Court sustain its Objections and Responses to the Plaintiffs' April 20, 2007 Requests for Admission.

Though arguing against each and every objection asserted by George's in their

papers, the Plaintiffs' allege that the definitional objections not specifically identified in or incorporated into a particular response should be overruled for lack of specificity. The Plaintiffs' assert, which is expressly denied, that "[a]s a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny." (Plaintiffs' Motion, Docket # 1265, Section 7 D-P, p. 14 - 21). Ironically, it is the lack of clarity and specificity in the Plaintiffs' poorly crafted definitions and Requests that necessitate the objections. As is clear from a review of George's Responses, any Request for Admission using one (1) or any combination of the seven (7) objectionable terms was objected to by George's for the reasons set forth in the General Objections. George's objects to each objectionable term separately and specifically in its General Objections. George's Responses are then subject to its objections.

The Plaintiffs drafted their Requests for Admission at their peril. In bringing this Motion, the Plaintiffs are attempting to impose upon George's a greater level of precision in responding to their Requests for Admission than what they seem to have put into drafting the Requests. If the Plaintiffs are "truly unable to discern exactly what the George's Defendants' Objections" are then it is because of the poorly crafted definitions and requests, not because of the proper Objections set forth by George's. For these and the aforementioned reasons, George's prays that this Court Sustain its Objections and Responses.

2. THE PLAINTIFFS' CONTENTION BASED REQUESTS FOR ADMISSION ARE OBJECTIONABLE AND SHOULD BE STRICKEN.

Plaintiffs' Requests for Admission that seek admission of legal conclusions or that are contention based are beyond the scope of Rule 36. "A request to admit a conclusion of law is improper." *U.S. v. Block*, 177 F.R.D. 695, 695-696 (M.D. Fla. Jan. 16 1997)(internal citations omitted). Moreover, Requests for Admission "should not put forward the requester's legal or factual contentions on the premise that, in the requester's view, they ought to be admitted." *Audiotext*, 1995 WL 625744, *2.

Interestingly, Plaintiffs admit in the pending motion that the definition of the term "your poultry growing operations" is used to support contentions in this case. On page 7, Plaintiffs emphatically state that "[t]he States' definition [of 'your poultry growing operations'] merely identifies the two types of operations for which the State contends the George's Defendants are legally answerable in this action." (Plaintiffs' Motion, Docket # 1265, p. 7). Clearly, any Request for Admission that uses this term exceeds the guidance of *Audiotext* and exceeds the parameters of Rule 36. The term "your poultry growing operations" is used in Requests for Admission 1 through 9 and 13 of the Plaintiffs' Requests for Admission. In addition to being objectionable for the reasons set forth in George's Responses, each and every one of those Requests are objectionable and should now be stricken based upon the Plaintiffs' new admission that they are contention based, which is not allowed by the Federal Rules of Civil Procedure. *Audiotext*, 1995 WL 625744, *2. For these and the aforementioned reasons, the Court should sustain George's Objections and Responses to the Plaintiffs' April 20, 2007 Requests for Admission.

3. THE PLAINTIFFS' REQUESTS FOR ADMISSION THAT SEEK INFORMATION ABOUT INDEPENDENT THIRD PARTIES ARE OBJECTIONABLE.

As defined, the term "your poultry growing operations" is objectionable because it seeks information from independent third parties or entities beyond George's control. The Plaintiffs assert that this is not a proper objection because they contend that George's is "answerable" for these independent third parties. The Plaintiffs' position is contrary to the Federal Rules of Civil Procedure because it is (as the Plaintiffs have admitted) based upon one of their contentions in this case and because it would require George's to subpoena or interview independent third parties, which exceeds the requirements of the Federal Rules of Civil Procedure.

As noted in *Haggie v. Coldwell Banker Real Estate Corp. et al.*, 2007 WL 1452495 (N.D.Miss. May 15, 2007), it is improper and outside the scope of Rule 36 to require a responding party to interview or subpoena records from independent third parties in order to admit or deny a Request for Admission." *Id.* at *2. Moreover, a responding party is "responsible for responding only to requests for admission that relate directly to its corporate entity, its agents or employees and their acts, omissions, or impressions and not those of third parties or individuals or information outside its control." *Id.* at *4. Clearly by defining "your poultry growing operations" to include "poultry growing operations under contract with George's" the plaintiffs have exceeded the bounds of Rule 36 and its progeny by seeking information about independent third parties. This is the exact type of Request for Admission that the *Haggie* court found to violate Rule 36. For these and the aforementioned reasons, the Court should sustain George's Objections and Responses to the Plaintiffs' April 20, 2007 Requests for Admission.

The problems associated with the definition of "your poultry growing operations" is magnified significantly when evaluated in light of the claimed scope of the Plaintiffs' Requests for Admission. George's objected to the Requests for Admission because they are potentially unlimited in scope and request information about independent third parties who may have stopped raising chickens under contract with George's 10, 20, 30 or even 40 years ago. It is overly burdensome and simply impossible to identify each and every one of these individuals or to respond to an unlimited Request for Admission seeking information on such individuals. As such, George's objected to the unlimited scope of the Requests for Admission and stands on those objections.

4. THE PLAINTIFFS' REQUESTS FOR ADMISSION THAT SEEK INFORMATION ABOUT INDEPENDENT THIRD PARTIES ARE OBJECTIONABLE.

Plaintiffs assert that they are the "master" of the terms employed in their Requests for Admission and assert that George's objections to the scope and nature of their Requests are misplaced. (Plaintiffs' Motion, Docket # 1265, p. 7). Certainly, the Plaintiffs draft their own Requests for Admission but those requests must still be clear, succinct, and within the framework of Rule 36 and its progeny. The Plaintiffs are not given a broad brush that allows them to paint whatever picture they choose in their Requests for Admission. Moreover, the Plaintiffs cannot propound poorly worded and ill-crafted requests and then attempt to hold George's to a greater level of precision in responding to the requests than actually went into drafting the requests. For these and the aforementioned reasons, George's asserted its objections to the Plaintiffs' Requests for Admission and then attempted to respond subject to those objections. George's stands on its Objections and Responses and hereby requests that this Court sustain its Objections.

GEORGE'S, INC., AND GEORGE'S FARMS, INC.'S ADOPTION OF PETERSON FARMS, INC.'S RESPONSE TO PLAINTIFFS' MOTION TO DETERMINE THE SUFFICIENCY OF DEFENDANT PETERSON FARMS, INC.'S RESPONSES TO PLAINTIFFS' APRIL 20, 2007 REQUESTS TO ADMIT (DOCKET# 1262)

Prior to filing this Motion against George's, Plaintiffs' filed a substantially similar Motion against Peterson Farms, Inc. (Docket # 1249) asserting many of the same arguments made against George's herein. In the interest of judicial efficiency, George's hereby joins in and adopts as its own the statements, averments, arguments and authorities set forth at length in and in support of "Peterson Farms, Inc.'s Response to Plaintiffs' Motion to Determine the Sufficiency of Defendant Peterson Farms, Inc.'s Responses to Plaintiffs' April 20, 2007 Requests to Admit" (Docket # 1262).

IV. CONCLUSION

In other papers pending before this Court, the Plaintiffs have asserted that "[t]he State should not be required to guess" what information a discovery request is seeking. (Plaintiffs' Response to Motion To Compel, Docket # 1234, p. 14). Likewise, George's should not be required to guess, hypothesize or refer to a myriad of documents, sources, and references to attempt to understand what the Plaintiffs' Request for Admission seek to be admitted or denied. The Plaintiffs' drafted their Requests for Admission and objectionable definitions at their peril. The Requests for Admission are objectionable for the reasons set forth in George's responses and herein. Nonetheless, George's attempted to respond as fully as possible and has met its obligations under the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, George's respectfully requests that this Court sustain its Objections and further prays for any and other relief to which it may be entitled.

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CERTIFICATE OF SERVICE

I certify that on the 25th of September, 2007, I electronically transmitted the attached document to the following ECF registrants:

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